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TAGS: CT PREL PTER UNSC
SUBJECT: COMPREHENSIVE CONVENTION ON INTERNATIONAL
TERRORISM -- RESPONSE TO INDIAN PROPOSAL

REF: A. A. USUN 840
 1B. B. STATE 62265

Classified By: IO ASSISTANT SECRETARY BRIMMER, FOR REASONS 1.4 B AND D

11. (U) This is an action request. See paras 2, 7-9.

12. (C) Summary: Consideration of the stalled Comprehensive Convention on International Terrorism (CCIT) is expected to resume during upcoming UN Sixth Committee meetings in October. USUN should maintain USG redlines in ensuring that 1) military activities are exempted from the scope of the CCIT using standard language from previous counter-terrorism instruments, and 2) violent acts of national liberation movements (NLMs) are not/not excluded from the scope of the CCIT. USUN is requested to reinforce approaches made to Indian officials by the Department conveying that while the U.S. believes that conclusion of a CCIT based on the 2002 coordinator's text is the preferred outcome, the U.S. is prepared to support the new Indian proposal to add additional preambular paragraphs to the 2002 Coordinator's text if their efforts to build a consensus around the proposal succeed. USUN should also indicate to Indian officials that with respect to their proposal, we prefer the specific preambular language described in paragraph 5. In conveying U.S. support, USUN should discuss with Indian officials how the U.S. can most effectively support the Indian proposal. Department is concerned that the Indian proposal will be reflexively rejected by those opposed to the current text if the U.S. openly supports or sponsors the proposal. End summary.

13. (C) Background: The CCIT, which was initiated by the Government of India in the late 1990s, has been stalled since 2001 due to efforts by the Organization of the Islamic Conference (OIC) to 1) weaken the exclusion of state military conduct from the scope of the CCIT and 2) exclude the actions of NLMs from the scope of the CCIT. In advancing these positions, the OIC has refused to accept standard language on the exclusion of military activities that is now found in five other counter-terrorism instruments. Given that the CCIT does not offer any significant new additions to the international legal framework for combating terrorism, the United States would only support conclusion of a CCIT text that did not undercut fundamental U.S. positions on both of these issues. This is particularly important given the "comprehensive" nature of the convention; the protections and CT policy gains the United States has achieved in over twenty years of negotiating the prior counterterrorism conventions could become irrelevant or undermined if the CCIT replaces the others as the standard legal instrument utilized by most countries in countering terrorism.

14. (C) Since 2001, there have been multiple efforts to resolve the objections by the OIC and conclude the convention. Some of these efforts, such as the U.S. agreement in 2002 to include a reference to "peoples" in Article 18 on the understanding that this would achieve agreement on the text, have involved substantive concessions by the U.S. that were pocketed by the OIC and countered with

continued objections to the text. An effort to resolve the impasse through the addition of preambular language favorable to the OIC in 2005 resulted in language unacceptable to the United States and insufficient for the OIC countries. In 2007, the Greek Coordinator offered the latest compromise proposal, which involves substantive changes to the operative language in the military exclusion article. To date, no OIC countries have indicated that they could accept the Greek coordinator's proposal. The U.S., while not expressly rejecting the Greek proposal, has indicated its preference for the 2002 text and expressed concerns with supporting the Greek proposal, particularly in the absence of any indication that the OIC would accept the text without further modification.

¶5. (C) The Government of India has recently indicated to the U.S. on a number of occasions that they consider completion of the CCIT to be a top priority for their government at the UN. India shares our preference to conclude the text on the basis of the 2002 language. Because the GOI does not believe the 2002 language remains a viable option, however, India has indicated a willingness to accept the 2007 Greek Coordinator's proposal, although Indian officials have advised the United States that they share our concerns with the manner in which the coordinator's proposal erodes the standard exclusion text. During meetings between Indian and U.S. officials, they have proposed a new approach whereby the operative text of the CCIT would remain the same as that found in the 2002 Coordinator's text. However, two additional preambular paragraphs would be added, as described in reftel A. The first preambular paragraph would be drawn directly from the International Convention for the Suppression of Terrorist Bombings (Bombings Convention). The second preambular paragraph uses preambular language drawn from the United Nations Global Counter-Terrorism Strategy (CT Strategy). Indian officials have requested U.S. support for this proposal.

¶6. (C) The U.S. has no objection to the addition of preambular language from the Bombings Convention. With respect to the language from the preamble of the CT Strategy, the Department is concerned, given the OIC's objections to the 2002 operative text, that the reference in the new preambular text drawn from the CT Strategy to the "right of self-determination of peoples which remain under colonial domination or foreign occupation" will be used by OIC countries to further an interpretation of the treaty as excluding the violent acts of NLMs. Thus, even though this is language that the United States has accepted in other contexts (e.g. the CT Strategy and the 2005 World Summit Outcome), including it here could undermine our position with respect to NLMs. In order to minimize this risk while still supporting the Indian approach, the Department's preference is for India to include a more limited preambular reference to the CT strategy that does not quote the self-determination language. Such an approach has the substantive benefits described above as well as the tactical advantage of providing some negotiating room around the specific text of this preambular reference. While the U.S. could ultimately accept the full preambular text if necessary to conclude the Convention, proposing the more limited text might help elicit a response from the OIC to the concept without prejudicing the U.S. if the OIC attempts to pocket the language without agreeing that it resolves the remaining issues in the convention. Finally, the Department is concerned that open U.S. support or sponsorship of this new Indian proposal will lead the OIC to reject it as an inadequate resolution.

¶7. (C Rel India) Consistent with the guidance and background provided above, USUN may inform Indian counterparts that the United States is prepared to support India's effort to bring the CCIT text to completion through new preambular language. In conveying U.S. support, USUN should discuss with Indian officials how the U.S. can most effectively support the Indian proposal to maximize its chances of acceptance and avoid an outcome whereby the OIC accepts the new preambular language, but still insists on changes to the operative text. USUN should indicate that we

have no objection to including the preambular language from the Bombings Convention. USUN should express to the Indians a preference that their proposal incorporate more limited language referencing the CT Strategy that tracks one of the following formulations (or similar text that does not expressly refer to self-determination):

"Noting the principles outlined in the 2005 World Summit Outcome, which are recalled in the UN Global Counter-Terrorism Strategy;"

OR

"Recalling also the 2005 World Summit Outcome and the UN Global Counter-Terrorism Strategy, including the rededication of world leaders to support all efforts to uphold the sovereign equality of all States and respect their territorial integrity and political independence."

¶8. (C) In consulting with G-8 countries and other like-minded missions, USUN should signal that there may be a new proposal to introduce preambular language to the CCIT text. USUN should indicate that the U.S. is of the view that, to the extent the preambular language is drawn from previously agreed text and does not involve a change in the operative language of the convention, this would be a preferable solution to the 2007 Coordinator's proposal which erodes the existing exclusion provision that has been adopted in previous counterterrorism conventions. As such, the U.S. is prepared to support new preambular language, drawn from existing text, if it will bring CCIT negotiations to conclusion.

¶9. (SBU) USUN should continue to avoid expressing support for the 2007 Greek Coordinator's proposal or any other proposal (including moving the preambular language to operative text) that involves changes to the operative text. If there is indication that OIC countries may be moving towards supporting the 2007 Greek Coordinator's text, in lieu of the Indian proposal to only add preambular language while keeping the operative text the same, USUN should seek further guidance from the Department as to a position on the 2007 Coordinator's proposal.

CLINTON